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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

10 CR 280 (JFK)

5 FRANCISCO ANTONIO
6 HIRALDO-GUERRERO,

7 Defendant.
-----x

8 New York, N.Y.
9 July 29, 2014
10 12:08 p.m.

11 Before:

12 HON. JOHN F. KEENAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

CHRISTIAN EVERDELL

ANDREA SURRATT

Assistant United States Attorneys

JEFFREY COHN

Attorney for Defendant

ALSO PRESENT:

NICHOLAS LUTTINGER, Interpreter

HUMBERTO GARCIA, Interpreter

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1 (In open court)

2 THE COURT: All right. Good morning again, Counsel.

3 So everybody may be seated for a moment.

4 This is in the matter of the *United States of America*
5 v. *Francisco Antonio Hiraldo-Guerrero*. The defendant is
6 present. He's here with his lawyer, Mr. Cohn. The government
7 is here. We have Mr. Everdell, and Ms. Surratt is here for the
8 government also with Mr. Everdell.

9 I believe the defendant has to be arraigned on the
10 superseding information, am I correct?

11 THE DEPUTY CLERK: Yes, Judge.

12 THE COURT: All right. Would you please rise.

13 THE DEPUTY CLERK: Mr. Francisco Antonio
14 Hiraldo-Guerrero, is this your signature on the waiver of
15 indictment?

16 THE DEFENDANT: Yes, sir.

17 THE DEPUTY CLERK: Before you signed it, did you
18 discuss it with your attorney?

19 THE DEFENDANT: Yes, sir.

20 THE DEPUTY CLERK: Do you understand that by signing
21 the waiver of indictment, you have given up your right to have
22 the case presented to a grand jury?

23 THE DEFENDANT: Yes, sir.

24 THE DEPUTY CLERK: Have you seen a copy of the
25 superseding information in this case, the seventh superseding

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1 information?

2 THE DEFENDANT: Yes, sir.

3 THE DEPUTY CLERK: Did you discuss it with your
4 attorney?

5 THE DEFENDANT: Yes, sir.

6 THE DEPUTY CLERK: Do you waive the reading of the
7 information?

8 THE DEFENDANT: Yes, sir.

9 THE DEPUTY CLERK: How do you plead?

10 THE DEFENDANT: Guilty.

11 THE DEPUTY CLERK: Please raise your right hand.

12 (Defendant sworn)

13 THE DEFENDANT: It will be only the truth.

14 THE COURT: All right. You can be seated while we
15 take the plea, sir. If you'd like, you may sit. That way you
16 may speak into the microphone and the interpreter, the official
17 translator, will be able to hear you.

18 If there's anything I ask you that you don't
19 understand, be sure to tell me that. You can then confer with
20 Mr. Cohn and he'll explain it to you. If you still don't
21 understand, you can ask me. The reason I tell you that is
22 because it's very important that you tell me the truth. You
23 have enough problems here with the charges in the information.
24 And if you should tell a lie, if you made a false statement
25 intentionally in other words, under oath, you could be

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1 prosecuted additionally for perjury and/or making a false
2 statement. It's very important that you tell me the truth.

3 You will tell me the truth, correct?

4 THE DEFENDANT: I feel that I'm informed on it, your
5 Honor.

6 THE COURT: All right. And your full name, sir.

7 THE DEFENDANT: Francisco Antonio Hiraldo-Guerrero,
8 your Honor.

9 THE COURT: How old are you, sir?

10 THE DEFENDANT: Fifty-four years old, your Honor.

11 THE COURT: And as I understand it, you're waiving the
12 reading of the information, is that correct?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: We're using the official interpreter
15 because, as I understand it, you don't speak English. And
16 we're going to have the proceedings translated for you into
17 Spanish from the English, and then they're going to translate
18 back from your Spanish for me into the English.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. What is your educational
22 background?

23 THE DEFENDANT: I'm a college graduate and I'm a
24 professional, your Honor.

25 THE COURT: As I understand it, when you were

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1 arrested, you were living in the Dominican Republic, is that
2 correct?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you married or single?

5 THE DEFENDANT: I'm married, your Honor.

6 THE COURT: And as I understand it, in the past you
7 worked in the Dominican Republic for the government, is that
8 right?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Are you currently or have you ever been
11 under the care of a doctor or a psychiatrist for mental or
12 emotional problems?

13 THE DEFENDANT: No, sir.

14 THE COURT: Have you ever been hospitalized or treated
15 for alcoholism, narcotics addiction or any other kind of drug
16 abuse?

17 THE DEFENDANT: No, sir.

18 THE COURT: Other than maybe being a little nervous
19 because this is very serious, are you feeling all right today?

20 THE DEFENDANT: Yes, your Honor. I am completely
21 fine. Thank you.

22 THE COURT: Are you under the influence of anything
23 such as alcohol or drugs that would affect your ability to
24 understand what you're doing today?

25 THE DEFENDANT: No, sir.

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1 THE COURT: Did you receive a copy of the information
2 and did you go over the information with Mr. Cohn?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did he explain to you the charges in the
5 information and do you feel you fully understand them?

6 THE DEFENDANT: Yes, your Honor. I understand them
7 completely.

8 THE COURT: Did you tell Mr. Cohn everything you know
9 about the case?

10 THE DEFENDANT: Absolutely everything that I know
11 about the case, your Honor.

12 THE COURT: Did you hold anything back from him?

13 THE DEFENDANT: No, sir.

14 THE COURT: Now, you have the right to plead not
15 guilty to the information, to persist in that plea and to go to
16 trial.

17 Do you understand that?

18 THE DEFENDANT: Yes, sir, I understand.

19 THE COURT: And if you were to plead not guilty, you
20 would have the right to a speedy and a public trial in front of
21 a jury of 12 people.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you understand that if Mr. Cohn
25 could not continue to represent you and if you couldn't afford

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1 another lawyer, I would appoint one to represent you free of
2 charge, or if for some reason Mr. Cohn couldn't represent you
3 or continue to represent you and you had the money for another
4 lawyer, you could get another lawyer? The point being that
5 you're entitled to a lawyer at trial and at every other stage
6 of the proceeding.

7 Do you understand that?

8 THE DEFENDANT: I understand, sir.

9 THE COURT: Now, if I accept your plea of guilty,
10 there will be no further trial of any kind.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And if you were to plead not guilty and if
14 you went to trial, at a trial you would be presumed to be
15 innocent unless and until the government proved that you were
16 guilty beyond a reasonable doubt to the satisfaction of all 12
17 jurors.

18 Do you understand that?

19 THE DEFENDANT: I understand, sir.

20 THE COURT: At a trial you would have the right to
21 confront and to cross-examine any and all witnesses the
22 government called against you.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: At a trial you would have the right to

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1 remain silent and no inference could be drawn against you
2 because of your silence. On the other hand, if you wanted to,
3 you could take the witness stand and testify in your own
4 defense.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If you wanted it and if your lawyer
8 requested it for you and if the government agreed and if I
9 agreed, you could be tried before me without a jury. They call
10 that a nonjury trial or a bench trial. If you had such a
11 trial, the burden would still be on the government to prove
12 that you were guilty beyond a reasonable doubt and you would
13 have all these constitutional rights that I've set forth fully.

14 Do you understand that?

15 THE DEFENDANT: I understand, sir.

16 THE COURT: At a trial you would have the right to
17 subpoena witnesses and evidence in your own defense.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, if I accept your offer to plead
21 guilty here this morning-- now it's not the morning anymore.
22 This afternoon. If I accept your plea, you're giving up all
23 these rights with respect to the charges against you in the
24 three counts of the information. There'll be no further trial
25 of any kind and I could sentence you just as if the jury had

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1 brought in a verdict of guilty against you.

2 Do you understand that?

3 THE DEFENDANT: I understand, sir.

4 THE COURT: All right. Now, you signed an agreement
5 this morning. We call that a plea agreement. And you signed
6 the agreement today in the presence of your lawyer.

7 Did you sign the agreement of your own free will?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And the agreement is contained in a
10 six-page letter which was originally dated June 19th, 2014.

11 And was the agreement explained to you by Mr. Cohn
12 before you signed it and do you think you understand the
13 agreement?

14 THE DEFENDANT: Yes, your Honor, I understand it.

15 THE COURT: The agreement is fine with me as to its
16 form. You should note it's not binding on me. There are two
17 parties to the agreement: You on the one side, and the
18 government on the other. I'm not a party and it doesn't bind
19 me.

20 Do you understand that?

21 THE DEFENDANT: I understand, sir.

22 THE COURT: Now I'm going to go over some of the
23 highlights of the agreement, and the reason I'm going to do
24 that is just to make sure that you're aware of these particular
25 things.

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1 Count One of the information carries a mandatory
2 minimum sentence of ten years in prison with a maximum penalty
3 of life.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Count Two carries the same mandatory
7 minimum of ten years and a maximum penalty of life.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And Count Three carries a mandatory
11 minimum sentence of ten years' imprisonment and a maximum
12 period of life in prison.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And each count contains the possibility of
16 an enormous fine. On each count the fine could be \$4 million.
17 So that means you face a possible fine of \$12 million if you
18 could afford it. If you can't afford it -- I can tell you I'm
19 not going to fine you, but if you can afford you, I could fine
20 you all the way up to \$12 million.

21 Do you understand that?

22 THE DEFENDANT: I understand, sir.

23 THE COURT: Now, also, on each count there is what is
24 called a special assessment of \$100, so you face-- and that's
25 mandatory. In other words, I have to impose that. So the

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1 sentence would include, and will include, three \$100 special
2 assessments for a total special assessment of \$300.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And when you get out of prison, you face a
6 period of supervised release. Supervised release means that
7 you have to abide by the terms and conditions set by the
8 probation department and set by me when I sentence you as to
9 how you must behave while free after being sentenced. And the
10 period of supervised release for each count in this case is the
11 mandatory minimum of five years on Count One, of ten years on
12 Count Two, and of ten years on Count Three. And on each count
13 the mandatory-- not mandatory. On each count the maximum could
14 be all the way up to life.

15 MR. EVERDELL: Your Honor, I think the mandatory
16 minimum on all three counts for supervised release is five
17 years.

18 THE COURT: Not according to the agreement. Look at
19 the paragraph that starts Count One on page 1, the second
20 paragraph. He's agreed to a five-year period there. That's
21 what it reads.

22 MR. EVERDELL: Yes, a mandatory minimum five-year term
23 of supervised release.

24 THE COURT: Yes.

25 MR. EVERDELL: I thought I heard the Court say a

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1 mandatory minimum of ten years.

2 THE COURT: I did as to Two and Three, but as to One
3 it's five years.

4 MR. EVERDELL: Your Honor, I'm sorry, as I read the
5 agreement, even under Counts Two and Three, I see the mandatory
6 minimum of ten years' imprisonment and a mandatory minimum of
7 five years' supervised release.

8 THE COURT: You know what? You're right on all
9 except-- no, you're right, I'm wrong. I'm sorry. I apologize.
10 You're 100 percent right; I'm 100 percent wrong. Well, I was
11 66 and two-thirds percent wrong, because the mandatory period
12 of supervised release -- the point is it's five years on each
13 count is the minimum. Okay. I apologize for that.

14 Now, when I sentence you, I have to consider the
15 sentencing guidelines. In the United States, we have
16 guidelines for the various sentences and I have to consider
17 them when I sentence you.

18 Also, as I understand it, you're admitting the
19 forfeiture allegations in Counts One, Two and Three of the
20 information. You're agreeing to forfeit a sum of money up to a
21 million dollars in United States currency.

22 Do you understand that?

23 MR. COHN: Your Honor, that number was calculated by
24 the government. It may, in fact, be right. I have discussed
25 with the government there may also be a revision downward, but

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1 I understand your Honor's question for the purpose of the
2 agreement.

3 THE COURT: Well, the agreement reads-- this time I
4 think I am right-- in Count Four, on page 2, "The defendant
5 furthermore admits to forfeiture allegations with respect to
6 Counts One, Two and Three of the agreement and agrees to
7 forfeit to the United States pursuant to Title 21, United
8 States Code, Section 853 a sum of money up to a million dollars
9 in United States currency."

10 MR. EVERDELL: That's correct, your Honor. Defense
11 counsel and I may have some additional conversations about the
12 amount of forfeiture. If it's revised downward, then at
13 sentencing there will be a final order of forfeiture that
14 reflects the revised amount. But for the purposes of the
15 agreement, it's a million dollars.

16 THE COURT: That's all right with me. I just want to
17 make sure he understood that he agreed to a million and that
18 you would seek to enforce it.

19 And you understand that, is that correct, sir?

20 THE DEFENDANT: Yes, your Honor, I understand it.

21 THE COURT: And, also, you've agreed to make
22 restitution if I affix restitution.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, you recognize that you're not a

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1 citizen of the United States, is that correct?

2 THE DEFENDANT: Yes, your Honor, I am not.

3 THE COURT: And did you discuss with your lawyer the
4 fact that the conviction here makes it likely that you'll be
5 deported? As a matter of fact, a deportation is presumptively
6 mandatory. Do you understand that?

7 THE DEFENDANT: I understand, sir.

8 THE COURT: And do you understand that you're not
9 going to challenge your conviction or any sentence because of
10 the fact that you may be deported or are likely to be deported?

11 THE DEFENDANT: I don't understand, your Honor.

12 THE COURT: You do understand?

13 THE DEFENDANT: Yes, I do understand.

14 THE COURT: Okay.

15 THE INTERPRETER: The interpreter would like to
16 clarify that initially the defendant said that he did not
17 understand.

18 THE COURT: Well, let me start again.

19 You agree, you know you're going to be deported,
20 right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So all I'm asking you is, isn't it true
23 that you've agreed not to appeal because you are deported?

24 THE DEFENDANT: No, sir.

25 THE COURT: Well, you have agreed to that, is that

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1 correct?

2 THE DEFENDANT: Yes, your Honor, I accept.

3 THE COURT: Okay. I think we cleared that up.

4 And, finally, regarding the agreement, you've agreed,
5 as I understand it, that you're not going to attack the
6 condition either on appeal or by way of habeas corpus because
7 the defendant has failed to produce discovery material or
8 exculpatory material.

9 Do you understand that?

10 THE DEFENDANT: I do understand, sir.

11 THE COURT: Okay. And are you satisfied with the
12 legal representation supplied so far by Mr. Cohn?

13 THE DEFENDANT: Yes, sir, I am satisfied.

14 THE COURT: And do you know that the government,
15 lawyers for the government, Ms. Surratt and Mr. Everdell, and
16 maybe others or maybe just one of them, but they no doubt have
17 been talking to Mr. Cohn about you and your case and sometimes
18 you weren't there? Do you understand that?

19 THE DEFENDANT: I understand, sir.

20 THE COURT: And have you been induced to offer to
21 plead guilty by reason of any promises, statements by anybody
22 to the effect that you would get leniency or special treatment
23 or consideration by pleading guilty instead of going to trial?

24 THE DEFENDANT: I have not been promised that, sir.

25 THE COURT: Have you been induced to offer to plead

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1 guilty by any fear or pressure or threat or force or anything
2 like that?

3 THE DEFENDANT: No, sir.

4 THE COURT: Is there anything you want to ask me at
5 this time about the charges in the indictment or in the
6 information, I should say? Is there anything-- let me start
7 again.

8 Is there anything you wish to ask me at this time
9 about the charges in the information or the consequences of
10 pleading guilty? Is there anything you want to ask me about
11 the possible sentence, the charges?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you offering to plead guilty because
14 in truth and in fact you are guilty?

15 THE DEFENDANT: Yes, sir, I am.

16 THE COURT: Does the government represent it has
17 sufficient evidence to establish a prime facia case?

18 MR. EVERDELL: We do, your Honor.

19 THE COURT: And, Mr. Cohn, do you have any valid legal
20 defense that would likely prevail if you went to trial or do
21 you know of any reason why the defendant should not plead
22 guilty?

23 MR. COHN: No, your Honor.

24 THE COURT: Okay. What is it that you did wrong?
25 Tell me what you did wrong.

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1 THE DEFENDANT: Well, your Honor, I agreed to provide
2 information to two groups of drug dealers that were functioning
3 in the Dominican Republic, your Honor. And the purpose was to
4 aid them in importing at least 5 kilograms of cocaine. And I
5 think I believe they were able to accomplish their purpose and
6 they were able to introduce into the United States large
7 amounts of --

8 THE COURT: When you say "introduce," do you mean
9 transport it into the United States?

10 THE DEFENDANT: They introduced that into the United
11 States, your Honor.

12 THE COURT: And you knew that was their purpose. Is
13 that correct?

14 THE DEFENDANT: I was part of the conspiracy, your
15 Honor.

16 THE COURT: All right. Anything else you want to tell
17 me about what you did?

18 THE DEFENDANT: Well, when I was brought to the United
19 States, I was brought before a judge. I was arraigned.

20 THE COURT: Was that here in Manhattan?

21 THE DEFENDANT: Yes, it was here in New York. In
22 Manhattan specifically, your Honor.

23 THE COURT: All right. Addressing the government,
24 either Ms. Surratt or Mr. Everdell, would you inquire or
25 explain to him and me venue.

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1 MR. EVERDELL: Yes, your Honor. The defendant in his
2 allocution mentioned two separate groups of traffickers.
3 Counts One and Two refer to the first group. Count Three
4 refers to the second group. With respect to Counts One and
5 Two, which is the conspiracy lasting from in or about 1999 to
6 2010 --

7 THE COURT: Were those the years, 1999 to 2010?

8 THE DEFENDANT: That's correct, sir.

9 THE COURT: Go ahead.

10 MR. EVERDELL: Those are the years for Counts One and
11 Two. With respect to those counts, the government proffers
12 that some of the drugs involved in that conspiracy were, in
13 fact, sold in New York City and the proceeds were then returned
14 to the Dominican Republic. That was part of the conspiracy
15 charged in those two counts. That provides both jurisdiction
16 and venue over the conspiracy in those counts.

17 THE COURT: All right.

18 MR. EVERDELL: With respect to Count Three, which the
19 years are 2007 to 2009, in or about --

20 THE COURT: Are those years correct?

21 THE DEFENDANT: Yes, sir.

22 MR. EVERDELL: As the defendant allocuted, he knew or
23 intended that those drugs would be going to the United States,
24 and venue is provided by the fact that he was first brought to
25 the Southern District of New York after extradition.

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1 THE COURT: He's indicated that he was brought here.

2 MR. EVERDELL: Yes, your Honor.

3 THE COURT: Thank you very much.

4 Is the plea adequate for your purposes, Mr. Everdell?

5 MR. EVERDELL: It is, your Honor.

6 THE COURT: All right. Mr. Cohn, does the plea
7 adequately cover the crimes charged in Counts One, Two and
8 Three?

9 MR. COHN: Yes, your Honor.

10 THE COURT: All right. I agree with counsel. I
11 accept the plea. I direct that the plea be entered upon the
12 minutes of the Court.

13 We'll set sentence down for --

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Let's set sentence down for November 3rd,
16 2014. The probation department is to prepare a presentence
17 report.

18 Thank you very much.

19 MR. EVERDELL: Thank you, your Honor.

20 MR. COHN: Thank you, your Honor.

21 MR. EVERDELL: I'm sorry, your Honor, do we have a
22 time on November 3rd?

23 THE COURT: At 11 o'clock. Thank you. At 11 o'clock
24 November 3rd. Thank you.

25 (Defendant not present)

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1 THE COURT: Do you want your client here?

2 MR. COHN: No, your Honor. The defense waives
3 Mr. Hiraldo-Guerrero's presence for the purpose of applying to
4 the Court to seal the transcript of today's proceedings. I
5 understand your Honor's--

6 THE COURT: What does the government have to say about
7 that application?

8 MR. EVERDELL: Your Honor, the government takes no
9 position on that.

10 THE COURT: There's no point in sealing it. I'm not
11 going to seal it. Thank you. The application, in other words,
12 is denied.

13 (Adjourned)

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